(P) Single Bench (4)

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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO(S) 5071 /2006 [S.B.]

PETITIONERS :-

1] Jageshwar Dubey S/o Late Jeevan Lal Dubey aged about 35 years, R/o in front of Water Tank, Kududand, Gayatri Mandir Chowk, Bilaspur [C.G.].

2] Chandra Kumar Nagdaune S/o late Ganesh Rao, aged about 45 years, R/o Ambedkar Nagar, Magarpara, Bilaspur [C.G.].

3] Mirza Wahid Beg S/o late H.A. Beg, aged about 30 years, R/o Masanganj, Bilaspur [C.G.].

4] Petrik Pasty S/o N.J. Pasty, aged about 30 years, R/o near Water Tank, Pump House Road, Torwa, Bilaspur [C.G.].

5] Kartik Ram Sahu S/o Laxman Sahu, aged about 30 years, R/o near Radha Krishna Mandir, Torwa, Bilaspur [C.G.].

P.R. No. 5085/06 Presented by Shri P.K. Tulsyan dated 12/9/06

12/9/06 सुतीक्ष्ण सिंह कछवाहा स्टेडिंग काउंसिल म्युनिसिपल कार्पोरेशन, बिलासपुर उच्च न्यायालय (छ.ग.)

VERSUS

RESPONDENTS :-

1] State of Chhattisgarh Through – The Secretary, Urban Administration and Development Department, D.K.S. Bhavan, Raipur [C.G.].

2] The Municipal Corporation, Bilaspur, Through- It's Commissioner, Bilaspur [C.G.].

3] The Commissioner, Municipal Corporation, Bilaspur [C.G.].

RECEIVED-COPY 12/9/06 CLERK to A. G. BILASPUR

COMMISSIONER Kaushik I.A.S. TAHSIL AREA

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT[S] ORDER[S], DIRECTION[S] TO DO JUSTICE IN THE MATTER

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. (S) No. 5071 of 2006

Petitioners : Jageshwar Dubey and others

Versus

Respondents : State of Chhattisgarh & others

Shri M. K. Bhaduri, Advocate for the petitioners.

Shri Arvind Dubey, Panel lawyer for the respondent No.1.

Shri A. S. Kachwaha, Advocate for the respondents No. 2 and 3.

O R D E R

(18th September, 2006)

1. The services of the petitioners No. 1 to 5 were engaged as daily wages worker by the respondent/Corporation on 13.10.1989, 5.8.1997, 1.10.1997, 26.10.1997 and in the year 1999, respectively. Thereafter the petitioners continued till 10.5.2000, when they were disengaged by the respondent/Corporation.

2. Be that as it may, since, admittedly, the petitioners' appointments were not in accordance with the scheme for public employment, after inviting proper applications and competition amongst qualifying persons, thus, the petitioners have no right to continuation, reinstatement, regularization etc in the service of the respondent/Corporation.

3. The Supreme Court in the case of **Secretary, State of Karnataka & others Vs. Umadevi (3) and others** {(2006) 4 SCC 1}, in paragraphs 28, 43, 44 and 53 has held as under:-

> *"28. In Director, Institute of Management Development, U.P. v. Pushpa Srivastava[15] this Court held that since the appointment was on purely contractual and ad hoc basis on consolidated pay*

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for a fixed period and terminable without notice, when the appointment came to an end by efflux of time, the appointee had no right to continue in the post and to claim regularization in service in the absence of any rule providing for regularization after the period of service. A limited relief of directing that the appointee be permitted on sympathetic consideration to be continued in service till the end of the calendar year concerned was issued. This Court noticed that when the appointment was purely on ad hoc and contractual basis for a limited period, on the expiry of the period, the right to remain in the post came to an end. This Court stated that the view they were taking was the only view possible and set aside the judgment of the High Court which had given relief to the appointee."

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to

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an end or of ad hoc employees who by the very nature of their appointment do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

"44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving

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the go-by to the procedure established by law in the matter of public employment."

"53..... The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboverefered to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularsing or making permanent, those not duly appointed as per the constitutional scheme."

4. In view of the dictum laid down by the Supreme Court in the above judgment and order, I do not find any merit in this petition. The petition is dismissed. However, the respondents are directed to consider the case of the petitioners as per direction of the Supreme Court, as stated above, as one time measure, in accordance with law. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur